

UNITED STATES OF AMERICA
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
OFFICE OF ADMINISTRATIVE LAW JUDGES

The Secretary, United States
Department of Housing and Urban
Development, on behalf of
Laura R. Pantoja, Victor R.
Pantoja and Laura L. Pantoja,

Charging Party,

v.

Dwight M. Simpson, Jr. and
Caroline Simpson,

Respondents.

HUDALJ 04-92-0708-8

Decided: September 9, 1994

Dwight M. Simpson, Jr., *Pro Se*
Caroline Simpson, *Pro Se*

Steven J. Edelstein, Esq.
For the Charging Party

Before: SAMUEL A. CHAITOVITZ
Administrative Law Judge

INITIAL DECISION

Statement of the Case and Procedural Background

This case arose pursuant to a complaint filed, and then amended, by Laura R. Pantoja with United States Department of Housing and Urban Development ("HUD") alleging that Dwight M. Simpson, Jr. and Caroline Simpson (collectively referred to as the "Simpsons" or "Respondents") violated § 3617 of the Fair Housing Act, as amended, ("Act") 42 U.S.C. § 3601 *et seq.*

A. Complaints

On or about May 20, 1992, Laura R. Pantoja filed the original Complaint in this matter with HUD alleging that the Simpsons had harassed and intimidated her because of her national origin and color in violation of § 3617 of the Act, 42 U.S.C. § 3617. Amended Determination of

Reasonable Cause and Charge of Discrimination (Amended Charge) p. 1.¹ Pursuant to § 3610(f) of the Act, 42 U.S.C. § 3610(f), the Complaint was dual filed with, and initially investigated by, the Louisville and Jefferson County Human Relations Commission. On August 19, 1992, that Agency issued a Probable Cause Determination. In accordance with its local fair housing ordinance, a "no-fault" conciliation agreement was prepared and sent to all parties. On September 4, 1992, Respondents rejected this offer. Amended Charge p.1.

The Complaint was amended on June 22, 1992, to include allegations of retaliatory acts taken subsequent to the filing of the original complaint. The case was officially closed by the local agency on September 15, 1992, at which point, pursuant to the Memorandum of Understanding between HUD and the local agency, dual status was withdrawn and HUD assumed exclusive jurisdiction. Amended Charge pp. 1-2.

B. Charges

On September 30, 1993, the Secretary of HUD, through the Office of the Regional Counsel, Region IV-Atlanta, pursuant to a delegation set forth in 56 Fed. Reg. 2931 (Jan. 25, 1991) later modified in 59 Fed. Reg. 10821 (Mar. 8, 1994), issued a Determination of Reasonable Cause and Charge of Discrimination ("Charge") on behalf of Ms. Laura R. Pantoja naming the Simpsons as Respondents.

On October 26, 1993, the Secretary of HUD moved to amend the Charge pursuant to 24 C.F.R. § 104.440(a) to include Ms. Laura R. Pantoja's parents, Mrs. Laura L. Pantoja and Mr. Victor R. Pantoja, as aggrieved persons and complainants, and to allege additional instances of harassment, intimidation, and retaliation.

On November 4, 1993, the Secretary moved for a default judgement because of Respondents' failure to file an answer to the Charge.

On November 9, 1993, I issued an Order instructing Respondents to file a response to the Secretary's pending motions on or before November 24, 1993. No response was filed.

On November 29, 1993, I denied the Secretary's Motion for a default judgement, and I granted the motion to amend the Charge giving the Secretary until December 6, 1993, to file an Amended Charge, and Respondents were given until December 20, 1993, to file an answer to the Amended Charge.

The Secretary filed the Amended Charge on December 2, 1993. No Answer to the Amended Charge was filed.

C. Pre-Hearing Matters

On November 23, 1993, an Order was issued requiring Respondents to answer HUD's

¹ As discussed hereinafter, all allegations of the Amended Charge are deemed admitted.

First Set of Interrogatories by December 3, 1993. On December 15, 1993, HUD filed a Motion for Sanctions, Costs, and a Protective Order because Respondents had not answered the interrogatories, appeared for the taking of depositions, nor had they produced documents as requested. Respondents filed no response to HUD's Motion for Sanctions. On December 28, 1993, I issued an Order granting sanctions with respect to Respondents' failure to answer the interrogatories, as ordered.

On December 21, 1993, the Secretary filed a Motion for Default Judgement based upon Respondents' failure to file an answer on or before December 20, 1993. No response was received to this motion and on December 28, 1993, I issued an Order to Show Cause ordering Respondents to respond on or before January 10, 1994, stating why the Motion for Default Judgement should not be granted. On January 13, 1994, Respondents filed a response to the Order to Show Cause in which Respondents did not explain why no answer had been filed and did not request an opportunity to file an answer. Rather, Respondents raised legal and procedural defenses.

Because the hearing was scheduled to commence on January 19, 1994, I reserved ruling on the Order to Show Cause, in order to do so at the hearing.

D. The Hearing

The hearing, however, did not commence on January 19, 1994, because Louisville, Kentucky facilities and the Federal building were closed for a number of days due to a great snow fall and extremely cold weather. No parties were able to appear at the scheduled hearing. Accordingly, the hearing could not be held at that time. On January 26, 1994, I issued an Order rescheduling the hearing to February 23, 1994, stating that any party who was unable to attend for medical reasons should submit a written statement from a physician to that effect.²

On January 19, 1994, Respondents filed "Respondents Verified Motion For En Banc Self-Recusal of Office Of Administrative Law Judges, HUD" directed to "Chief Administrative Law Judge Alan W. Heifetz and other judges." To the extent that motion was directed to me, it was denied by Order dated January 26, 1994, because no good cause was shown for such action.

With respect to the Order to Show Cause, on February 1, 1994, I issued an Order that,

² On February 16, 1994, Respondents filed a Statement which, among other things, dealt with Mr. Dwight Simpson's medical condition. This Statement did not request that the hearing be postponed. Attached to the Statement, however, were a number of medical records and related documents concerning Mr. Dwight Simpson; one, on what purported to be Veterans Administration letterhead, described Mr. Dwight Simpson's medical condition with respect to vertigo. It was subsequently disclosed at the hearing in this matter that this document was, in fact, not prepared by the Veterans Administration, but rather, had been prepared by Mrs. Caroline Simpson on her personal computer, including what purported to be the Veterans Administration letterhead. Transcript pages 315-316; Respondent's Exhibit Number 1. An Order was issued by me on February 18, 1994, stating that Respondents' Statement and the attachments did not establish that Mr. Dwight Simpson could not attend the hearing because of illness.

because no answer had been filed by Respondents, with no explanation for this failure, all allegations of the Amended Charge were deemed admitted, but, also, that Respondents would be permitted to litigate affirmative legal and procedural defenses at the hearing.

The hearing in this matter commenced on February 23, 1994, in Louisville, Kentucky³ and continued for the remainder of that week. The hearing was then recessed and scheduled to reconvene on Monday, March 21, 1994. The hearing reconvened on March 21, 1994, but was adjourned on Thursday, March 24, 1994, shortly after noon because Mr. Simpson became suddenly and inexplicably indisposed.⁴

An Order was issued by me on April 6, 1994, stating that the hearing would reconvene on April 18, 1994, and that if any party is unable to attend because of illness a motion for a continuance should be filed by April 14, 1994, together with a supporting affidavit from a physician. No such motion was filed.

The hearing reconvened on April 18, 1994. Respondents failed to appear and did not notify me or the Charging Party that they would not attend, nor did they request a postponement. The hearing opened and the participants waited 15 minutes to permit Respondents to attend or send word. The Charging Party then put in the remainder of its case. Respondents still had not appeared or sent word and the hearing concluded some 45 minutes after it had opened.⁵

The time for filing post hearing was set at June 13, 1994, and an Order to that effect was issued on April 19, 1994. Because delivery of transcripts in this matter was delayed, the

³42 U.S.C. § 3612(g) requires commencement of the hearing no later than 120 days after the charge is issued unless it is impractical to do so. In this case it was impractical to do so because the initial date for the hearing was postponed because of the severe weather and then there were unavoidable scheduling conflicts.

⁴Respondents have not submitted any statement or medical explanation setting forth the exact nature of Mr. Dwight Simpson's indisposition.

⁵The foregoing sets forth only some of the procedural matters that arose during the course of this case. In this regard it should be noted that Respondents did not, prior to the hearing, file a list of witnesses or exchange documents as the parties had been ordered.

Secretary of HUD requested an extension of time to file briefs. By Order dated June 3, 1994, no opposition to the Motion having been received, the time for filing briefs was extended and in the Notice and Briefing Schedule issued on June 13, 1994, the time for filing briefs was set for July 13, 1994. The Secretary of HUD filed a brief and Respondents have not. This matter is ripe for decision.

Based on the entire record in this matter, including my observation of the witnesses and their demeanor, and the allegations of the Amended Charge, which are all deemed admitted, I make the following findings:

Findings of Fact

The Parties

1. The Complainants, Ms. Laura R. Pantoja, her father Mr. Victor R. Pantoja, and her mother Mrs. Laura L. Pantoja reside in a single family home located at 3101 Hikes Lane, Louisville, Kentucky. Amended Charge ¶ 5.

2. The Complainants are dark-complected and of Hispanic descent. Amended Charge ¶ 6.⁶ They were originally from Peru (Tr. 656, 1104, 1932)⁷ and are American citizens. Tr. 659, 1105, 1935.

3. The Respondents, Mr. Dwight M. Simpson, Jr. and Mrs. Caroline Simpson are a married couple who reside in their home at 1328 South Brook Street, Louisville, Kentucky ("the Simpson home").⁸ Amended Charge ¶ 7. Both Mr. and Mrs. Simpson are white. Amended Charge ¶ 8, and my observation at the hearing.

The Pantoja House

4. The dwelling in issue ("the Pantoja house") is a vacant single family home located at 1324 South Brook Street, Louisville, next door to the Simpson home. Amended Charge ¶ 9.

5. The Pantoja house is owned by Mr. Victor R. Pantoja and Mrs. Laura L. Pantoja, Tr. 1152, although they intend to give it to Ms. Laura R. Pantoja as soon as she can move in. In fact Mr. Victor R. Pantoja feels he has already given the home to his daughter. Tr. 690. Both Mr. Victor R. Pantoja and Mrs. Laura L. Pantoja have given their daughter, Ms. Laura R. Pantoja full

⁶My observation of the Complainants also supports this finding.

⁷The following abbreviations will be used: "Tr." for references to the transcript, followed by the appropriate page numbers, except "NG TR." will be used to refer to that portion of the transcript of April 18, 1994, which was furnished by Neal R. Gross & Co.; "G Ex." for the Secretary's exhibits and "R Ex." for Respondents' exhibits.

⁸All references to Louisville, Kentucky, hereafter will be to "Louisville."

written powers of attorney. G Ex. 1; G Ex. 2.; Amended Charge ¶ 9. All transactions involving the Pantoja house, including all contacts with the city's enforcement agencies have been handled by Ms. Laura R. Pantoja pursuant to the powers of attorney. Amended Charge ¶ 9. Sometime in 1990, Mr. Victor R. Pantoja and Mrs. Laura L. Pantoja told Ms. Laura R. Pantoja that they would give her the Pantoja house. Tr. 691, 1942, 1948-1949.

6. Both the Pantoja house and the Simpson home are located in a neighborhood called "Toonerville," in an historic district of Louisville called "Old Louisville." G Ex. 7, p. 1. Many homes in Old Louisville are vacant and in disrepair. Most are occupied, however, and many are in the process of being renovated. Amended Charge ¶ 10.

7. The Pantoja house had been cited numerous times for violations of the city's building codes. In fact, the home had deteriorated to such an extent that in May 1991, condemnation proceedings were authorized by the Board of Alderman. Amended Charge ¶ 11; Tr. 55-58.

8. Proceedings to condemn the Pantoja house were never actually begun, however, as sometime during the Spring of 1991, Ms. Laura R. Pantoja had begun making extensive renovations to the house with the intent of occupying it as soon as possible. Amended Charge ¶ 12; Tr. 58. She gave up her business in 1991 in order to devote the time and energy necessary to rehabilitate this house. Tr. 1942.

9. By February of 1992, the Pantoja house had been inspected a total of forty-one (41) times. Forty-five (45) violations had been cited. An inspection on February 18, 1992, by the city's Department of Inspections, Permits & Licenses ("DIPL"), however, revealed that "all cited violations have been corrected." Amended Charge ¶ 13; Tr. 142-143; G Ex. 4. In 1992, after she had corrected all the outstanding violations, Ms. Laura R. Pantoja moved most of her belongings into the Pantoja house. Tr. 1949.

The Simpsons' Campaign

10. During the Spring of 1991, the Simpsons became aware of the Pantojas' interest in occupying the Pantoja house. It was at that point that the Simpsons' campaign of harassment and intimidation began. The minutes of the May 9, 1991, meeting of the Toonerville Neighborhood Association report Mrs. Caroline Simpson mentioning that "the current owners" of the home "are from Peru." Amended Charge ¶ 15.

11. Within a week of the February 18, 1992, inspection, the Simpsons presented a four page letter to DIPL detailing fourteen different violations allegedly existing at the Pantoja house. G Ex. 5. Upon investigation, DIPL determined that of the fourteen alleged violations, only one had any merit at all, a minor violation involving a junked vehicle in the back yard. The thirteen other alleged violations were frivolous.⁹

⁹The vehicle in question was moved within a week of its being cited and thus required no further action. Tr. 74-

Tr. 70, 481.

12. From March 1992 until early 1993, there were many derelict vehicles in the neighborhood, many with expired or no license plates. Several were on the property next to the Pantoja house. NG Tr. 7-8. A DIPL official stated that no one else ever came forward and complained about "junked cars." Tr. 324. The record does not establish that any complaints about these cars were filed by the Simpsons. The Simpsons demanded that because of the junked car the Pantojas should be fined \$1,000 per day and be put in jail. Tr. 184, G Ex 5.

13. The Pantojas' accomplishments were documented in an April 6, 1992, memorandum from the city's Chief Code Enforcement Officer, Vacant Properties Division, DIPL, to the Director of that department:

I feel we have probably been more demanding and gained more compliance here than with any other vacant structure I have dealt with. We need to insure that we do not allow the neighbors to pressure us into harassment of these people who have turned the property around in the last year We have continued to work with the property owner and have required more than any other vacant building we monitor.

Amended Charge ¶ 14; G Ex. 7, p 1.

14. Beginning sometime in the Spring of 1991, the Simpsons began filing a series of complaints with the city's code enforcement agencies, falsely alleging violations at the Pantoja house. For example:

a. The Simpsons alleged that an exposed pipe on the Pantojas' property posed a threat to the neighborhood. The inspection revealed no such threat and the complaint was frivolous. According to the top Code Enforcement official:

This capped line certainly had not been a threat to the neighborhood and it is doubtful that it could (or should) have bothered anyone.

Tr. 76, 204-205, 216; G Ex. 7, p 3.

75, 796.

b. A complaint regarding litter on the Pantojas' property was investigated. The investigation revealed:

There was no litter in either our photos or Mr. Simpson's. There has not been litter, glass, etc. in the front yard for some time.

G Ex. 7, p 6.

c. A complaint regarding defects in the home's exterior walls was considered minor and not cited. Tr. 223; G Ex. 7.

d. A complaint alleging defects in the roof flashing was also found to be without merit. Tr. 76; G Ex. 7, p 4-5.

e. An investigation prompted by a complaint regarding downspouts revealed "no water standing nor any observable nuisance." G Ex. 7, p 5.

f. A complaint concerning a tree on the Pantojas, property revealed no hazard and did not endanger anyone else's property. Tr. 267, 838.

Amended Charge ¶ 16.

15. Because the Pantoja house did not come into total compliance until February 1992, no doubt some of the Simpsons' complaints did have some merit. However, many, if not most involved minor, even inconsequential, violations (from a "broken window" to "pigeons"). According to the city's chief code enforcement official, these types of violations would not have come to the attention of the code enforcement authorities had the Simpsons not complained. Just as significant, many other homes in the neighborhood were in equally poor or even worse condition, including the Simpsons' own home which had been cited many times and was itself the subject of a stop work order because of code violations. According to city officials, the heightened scrutiny given the Pantoja house by the code enforcement authorities was the direct result of the Simpsons' conduct, which has been described by the code enforcement authorities as threatening, badgering and offensive. Amended Charge ¶ 16.

16. As the result of a complaint filed by the Simpsons alleging electrical code violations, the city issued a Stop Work Order against the Pantojas on June 13, 1992. The ensuing inspection revealed no violation and the order was subsequently lifted. Amended Charge ¶ 17; Tr. 1978, G Ex. 15.¹⁰

¹⁰ As late as October 20, 1993, Mr. Dwight Simpson complained of the "Miscreant Pantojas," that the proper permits had not been obtained. G Ex. 67. The DIPL inspector found the Pantojas had followed proper permitting procedures and there were no violations. Tr. 1080, 1088.

17. From February 1992, to the date of the hearing DIPL was unaware of any condition at the Pantoja house that was hazardous, unsafe, unsanitary or dangerous. Tr. 281-282.

18. The Simpsons also filed meritless complaints with the Property Improvement Committee of the Old Louisville Neighborhood Council¹¹. That organization sent a total of four different violation notices to the owners of three different homes in the 1300 block of South Brook Street. Not once, however, did that organization cite the Pantoja house. Amended Charge ¶ 18; G Ex. 19; G Ex 26, p 3.

19. No one, other than the Simpsons, had ever complained so much to DIPL about any other piece of property any where in Louisville. Tr. 67-68, 91-92, 440; G Ex. 12. No individuals, other than the Simpsons complained about the Pantoja house to the Pantojas or to others once Ms. Laura R. Pantoja started restoring the house in 1991. Tr. 1944, 2049.

20. On several occasions the Simpsons have been observed going onto the Pantojas' property when no Complainant was present. For example:

a. In May 1992, Mr. Dwight Simpson was seen cutting a large branch from one of his trees, then leaving it on the Pantojas' property. Later, Mrs. Caroline Simpson was seen cutting the fallen limb into little pieces. The Simpsons then admonished the Pantojas for the unsightly appearance of their yard.

b. The Simpsons left their own yard and grass clippings on the Pantojas' property on other occasions, then lodged several complaints about unsightly rubbish on the Pantojas' property.

Amended Charge ¶ 19; Tr. 1961-1962.

21. Officials of DIPL recognized that the Simpsons were engaged in a personal vendetta against the Pantojas. Tr. 102, 439, 501-502, G Ex. 22.

Post Complaint Conduct

22. The Simpsons were served with a copy of the original fair housing complaint on May 29, 1992. Several days later, the Simpsons campaign of intimidation, harassment and retaliation

¹¹The Property Improvement Committee was formed "to further the development of Old Louisville and improve the quality of life in the neighborhood." Members of the committee go door to door identifying conditions "detrimental" to the neighborhood. Postcards are sent, or telephone calls are made, to owners whose property appears to be in violation of one of the city's applicable building codes. When efforts at informal compliance do not succeed, the committee pursues enforcement through official agencies. Amended Charge ¶ 18.

intensified. Amended Charge ¶ 20.

23. In early June 1992, Mr. Dwight Simpson confronted Ms. Laura R. Pantoja and Mr. Victor R. Pantoja outside the Pantoja house. Mr. Simpson told both of the Pantojas "You haven't taken the right steps and because of that we are going to make things very unpleasant for you." Amended Charge ¶ 21.¹²

24. On July 30, 1992, the Simpsons sent a letter to Mr. Victor R. Pantoja and Mrs. Laura L. Pantoja citing what they called a "clear and present danger" to the Simpsons' property due to the presence of certain trees in the Pantojas' yard. The letter accused "someone working for" the Pantojas of poisoning one of the trees, and asks the Pantojas to provide the dates the poison was used, its strength and the quantity applied. The letter concluded:

As of this notice, any repercussions will not be considered
an 'Act of God' and restitution and compensation will be
sought from you both.

Mr. Dwight Simpson placed this letter in the entry foyer of the Pantoja house. The trees presented no danger whatsoever and there was no evidence of poison. Amended Charge ¶ 22; Tr. 838, 855, 858; R Ex. 102.

25. On August 17, 1992, the Simpsons sent a letter to Mr. Victor R. Pantoja and Mrs. Laura L. Pantoja falsely alleging there were code violations with the Pantoja house's storm drains. Mr. and Mrs. Pantoja were "formally placed on notice" regarding this "clear and present danger." The letter ended with this threat:

If this code violation is not remedied we will
be forced to pursue appropriate avenues of relief.

Amended Charge ¶ 23; R Ex. 102.

¹²That June Mrs. Laura R. Pantoja noticed that one of her windows had been shattered by what might have been a gun shot. NG Tr. 6. Mr. Dwight Simpson owned a gun and ammunition and had commented that it would be easy to shoot her windows out. Tr. 572, 588-589. I conclude, however, this is not sufficient for me to find that Mr. Dwight Simpson shot out the window.

26. A mutual neighbor reported to investigators that Mr. Dwight Simpson had instructed him not to help the Pantojas cut their grass because "it will make her [Laura R. Pantoja] look bad if no one cuts her grass." Amended Charge ¶ 24.

27. At one point Mr. Dwight Simpson appeared at the offices of the code enforcement agency asking that Ms. Laura R. Pantoja be put in jail. Amended Charge ¶ 25.

28. On September 7, 1992, in response to the ongoing fair housing investigation, the Simpsons sent the Pantojas a document the Simpsons entitled a "Fair Warning Notice." This notice states:

By receipt hereof you are officially advised that
the undersigned intends to seek a FEDERAL GRAND JURY
probe into certain elements which could constitute a
CRIMINAL CONSPIRACY . . . You are entitled to and are
enjoined to seek counsel . . . should you be identified
as a TARGET, WITNESS, or THIRD PARTY.

The Simpsons sent this notice to twenty-one others, including the officials of the local fair housing agency, the neighborhood association, both the local and regional HUD offices, as well as several county administrators. Amended Charge ¶ 26; G Ex. 30.

29. On or about September 8, 1992, the Simpsons filed an affidavit with the Jefferson County prosecutor's office seeking the issuance of a criminal warrant and Ms. Laura R. Pantoja's "immediate arrest." The Simpsons' request was denied by the Court's Pretrial Services/Dispute Mediation office the following day. Amended Charge ¶ 27; G Ex. 32.¹³

30. On October 23, 1992, Mr. Dwight Simpson confronted Ms. Laura R. Pantoja and her

¹³On September 29, 1993, Mr. Dwight Simpson sent a letter to the Jefferson County Attorney and its County Prosecutor, with a copy to Mr. and Mrs. Pantoja, complaining that the criminal complaint warrant had not been filed against Ms. Laura R. Pantoja and threatening to ask the U. S. attorney to act against both county officials. G. Ex. 32.

father outside the Pantoja house. Mr. Dwight Simpson screamed, called Ms. Laura R. Pantoja "a liar" and said he would not stop until she was in jail. Amended Charge ¶ 28; Tr. 665-667, 1995-1996.

31. On October 24, 1992, Mr. Dwight Simpson confronted Mrs. Laura L. Pantoja at the Pantoja house and yelled at her and said, "Hey, Hey, look at me old women" and then he called her "Mexican or Puerto Rican" with a word so bad Mrs. Laura L. Pantoja was unable to repeat it. Tr. 1109, 1113. On that same day Mrs. Caroline Simpson almost ran over Mrs. Laura L. Pantoja with a truck. Mrs. Caroline Simpson drove the truck in reverse when she almost hit Mrs. Laura L. Pantoja. Then Mrs. Caroline Simpson drove away with her car squealing. Tr. 1110-1111, 2052-2053.

32. In September of 1992 and October 1992, Mr. Dwight Simpson wrote to the Chairman of the local Human Relations Commission threatening various civil and criminal actions against the Chairman because of the handling of the Pantojas' complaints. Copies of the letters were sent to the Pantojas. G Ex. 31; G Ex. 33.

33. On May 20, 1992, Mr. Dwight Simpson purchased a 1991 Certificate of Delinquency, real estate tax bill, on the Pantoja house pursuant to KRS § 134.450. Kentucky law allows any individual to purchase the delinquent tax bill of another. If the delinquency remains unpaid after one year, the purchaser may bring a civil action to enforce the obligation. Any property owned by the delinquent taxpayer may then be subject to foreclosure or execution in satisfaction of a judgement. KRS § 134.490. Amended Charge ¶ 29.

34. On October 28, 1992, the Pantojas notified Mr. Dwight Simpson by certified mail-return receipt requested, that they wished to pay the bill (\$221.79). Amended Charge ¶ 30; G Ex. 36.

35. Mr. Dwight Simpson received the letter referred to in ¶ 34 above on November 12, 1992, but did not respond. Amended Charge ¶ 31; Tr. 2006; G Ex. 36; G Ex. 47.

36. On December 15, 1992, the Pantojas paid the amount of the delinquency into an escrow account maintained by the Count Clerk, and that office accepted payment pursuant to KRS. § 134.480(3). G Ex. 47, p 2, ¶ 7. The County Clerk then released the Certificate of Delinquency and notified Mr. Dwight Simpson by certified letter the method by which he could obtain the funds. Amended Charge ¶ 32; G Ex. 47, Plaintiff's Ex. E.

37. Mr. Dwight Simpson refused to accept the funds on the grounds that: (1) the above-mentioned letters were sent to him via "certified," not "registered," mail, as required by statute; and (2) the County Clerk violated the statute by accepting funds from Ms. Laura R. Pantoja pursuant to her Power of Attorney. Amended Charge ¶ 33; G Ex. 47, p 3.

38. As a result of Mr. Dwight Simpson's unjustified refusal to accept the funds in issue,

the County Clerk was forced to file a "Declaration of Rights" suit in Jefferson Circuit Court and to name the Mr. Victor R. Pantoja, Mrs. Laura L. Pantoja and Mr. Dwight Simpson as defendants (Case No. 93-C102797). Amended Charge ¶ 34; G Ex. 47.¹⁴

39. In July or August of 1993, Mr. Dwight Simpson filed a letter with the Court that proposed an order be issued which, among other things, enjoined Ms. Laura R. Pantoja from having any contact with her parents. In the letter she was warned that a violation of the order would result in a warrant for her arrest and in her confinement. G Ex. 55.

40. As a further act of harassment, intimidation and retaliation, Mr. Dwight Simpson filed a petition in the above action to add Ms. Laura R. Pantoja as a third-party defendant, and asking for an award of "punitive damages" against the Pantojas and the County Clerk of "at least" one million dollars. Amended Charge ¶ 35; G Ex. 49.

41. As a result of the actions described above with respect to the tax and "Declaration of Rights" litigation the Pantojas have been required to hire an attorney, and have incurred, and will continue to incur, sizable attorneys fees in connection with that case. Amended Charge ¶ 36.

42. The Court, in the tax litigation, characterized some of Mr. Dwight Simpson's motions as "meritless and a part of a continuing pattern of abuse of the judicial process" and noted that "Defendant Simpson has abused this Court's patience." G Ex. 80.

43. On October 1, 1993, the Pantojas' attorney instructed the Simpsons that all documents should be served on the attorney, not on the Pantojas. G Ex. 75, Ex. 2. Mr. Dwight Simpson was again so advised on October 25, 1993. G Ex. 75, Ex. 1. The Simpsons ignored these instructions and continued to serve the Pantojas at their Hikes Lane residence. Tr. 2035-2036. The Simpsons continued to serve Ms. Laura R. Pantoja even though she was not a party to the suit. Tr. 1730. Both Simpsons actively engaged in the service of the papers at the Hikes Lane residence and their conduct was very disruptive and intimidating. Tr. 670, 1113-1114, 2035-2036.

¹⁴ At the hearing in the subject case Mr. Dwight Simpson stated that he did not accept the payment of the delinquency because he wished to continue to receive the 3 1/2% interest the deposited sum was earning. Tr. 1542-1543.

44. On December 4, 1992, the Simpsons sent a letter to Jefferson County's Chief Judge describing Ms. Laura R. Pantoja as being "deeply disturbed" and a "documented perjurer." Copies of this letter were widely disseminated, including to state and county officials. G Ex. 38.

45. On September 10, 1993, Mrs. Caroline Simpson filed an affidavit with the Louisville mayor's office stating that Ms. Laura R. Pantoja is a perjurer and displays clinical signs of a pathological liar. G Ex. 64. Copies of this letter were left at the Pantoja house and mailed to the Hikes Lane residence. Tr. 1993.

Discriminatory Motivation

46. During a conversation in April or May of 1992, with Mr. Robert Barrow, the city's Code Enforcement Officer, Existing Structures Division, Mr. Dwight Simpson mentioned that Ms. Laura R. Pantoja was Peruvian. According to the witness, Mr. Dwight Simpson: "leaned over and said to me . . . 'she's Peruvian, you know.' He

said it as though Peruvians were some type of disease." Amended Charge ¶ 37; Tr. 774, 829-830.¹⁵

47. The following statements have been attributed to Mr. Dwight Simpson during the period October 1992 through January 1993:

- a. Mr. Dwight Simpson said he was going to hound Ms. Laura R. Pantoja out of the house because he was not going to live next door to a "spic"; Mr Dwight Simpson was heard to refer to Ms. Laura R. Pantoja as a "spic," a "damn Mexican," and a "tortilla shuffling bitch."
- b. Mr. Dwight Simpson said he was able to have the HUD case dismissed because he is "buddies with Jack Kemp." Amended Charge ¶ 39.
- c. Mr. Dwight Simpson said having a house in disrepair was "not unlike her kind." Amended Charge ¶ 40.
- d. Mr. Dwight Simpson said it would be a matter of time before he was able to make them lose their property; Mr. Dwight Simpson said "he would hound her to hell and back." Amended Charge ¶ 41 (the first). Mr. Dwight Simpson stated that he was going to hound Ms. Laura R. Pantoja out of the house. Tr. 571.

48. Mr. Dwight Simpson constantly referred to the Pantojas as "wetbacks" and "spics." Tr. 613.

49. Mrs. Caroline Simpson said the Pantojas could not get away with putting up a pallet fence if they were not brown. Amended Charge ¶ 38; Tr. 570-571, 581.

Conduct Since Charge

49. Since the filing of the Charge, the Simpsons have continued unabated their campaign of harassment, intimidation and retaliation against the Pantojas. Such acts included:

- a. Throwing trash on the sidewalk in front of the Pantoja house. Tr. 2045-2046.
- b. Filing additional frivolous complaints with the code enforcement authorities. Tr. 955; G Ex. 67.
- c. Sending threatening and harassing letters and other documents to the

¹⁵When Mr. Barrow pointed out a problem with downspouts at a house adjacent to the Simpsons' house, Mr. Simpson replied, . . . "[don't] worry about that one . . . the house [is] owned by an old white guy." Tr. 776.

Pantojas.

Amended Charge ¶ 41 (the second).

Evidence of Damages

50. Mr. Victor R. Pantoja suffered a number of adverse effects from the conduct of the Simpsons. As a result of the Simpsons' conduct Mr. Victor R. Pantoja felt dizzy, had to be carried to the hospital where he was given medicine, and he was not "able to do anything." Tr. 676. On another occasion, after seeing Mr. Dwight Simpson scream at Ms. Laura R. Pantoja, Mr. Victor R. Pantoja became sick and nauseated. Tr. 666.

51. As a result of the Simpsons' conduct and campaign, Mrs. Laura L. Pantoja experienced and felt pain, humiliation, frustration and was shaken by the incident involving Mrs. Caroline Simpson and the truck, which resulted in Mrs. Pantoja becoming dizzy and being taken to the hospital. It was the first time she suffered from high blood pressure. Tr. 1111, 1112, 1147, 1149.

52. In addition, as a result of the Simpsons' conduct, Mrs. Laura L. Pantoja cried when she learned Mr. Dwight Simpson had threatened to put Ms. Laura R. Pantoja in jail, and Mrs. Laura L. Pantoja wondered where she would get the money to get her daughter out of jail. Tr. 1121. Mrs. Laura L. Pantoja felt guilt as she watched her daughter suffer under the Simpsons' campaign. Tr. 1200-1202, 1138. Mrs. Laura L. Pantoja felt responsible because her daughter was going through all this because she was attempting to defend her parents. Mrs. Laura L. Pantoja felt everything disintegrating. Tr. 1138. She felt pain from having to watch the Simpsons' throw garbage on the property of the Pantoja house and she felt humiliated, threatened and menaced by having to endure the unending series of defamatory letters issued by the Simpsons. Tr. 1117, 1147-1149.

53. The Simpsons' campaign made Mrs. Laura L. Pantoja nervous and hysterical. It affected her health. Tr. 1950-1951.

54. As a result of the Simpsons' conduct and campaign, Ms. Laura R. Pantoja went from being a happy person who looked forward to living on her own to being a person frightened for her life and the lives of her mother and father. Tr. 1942, 1950. She was afraid when at the Pantoja house and as a result she never did move in. Instead she lives with her parents at the Hikes Lane residence. Tr. 1947. She fears for her own safety at the Pantoja house and for her family's safety when they come to visit her there. Tr. 1950, 1998. She does not know if she will ever feel safe at the Pantoja house. NG Tr. 20-21.

55. Because of the Simpsons' campaign Ms. Laura R. Pantoja felt great frustration at not being able to complete her renovations. Tr. 2054. The Simpsons' letter writing campaign also took its toll on Ms. Laura R. Pantoja. She felt threatened, she feared her parents would not be

able to raise the money necessary to get her out of jail, and that she would never be able to get a job. Tr. 1928-1929, 1992. As a result Ms. Laura R. Pantoja, on the day she got her citizenship, applied to change her name to Laura Rosa Rudolfo Gentile. Tr. 1928.¹⁶ She fears for her future and fears nobody will hire her because of all the things the Simpsons have said about her. Tr. 1994.

56. As a result of the Simpsons' conduct Ms. Laura R. Pantoja has trouble sleeping and she wakes up in the middle of the night thinking about these events. Tr. 1991. She felt responsible to protect her parents from the Simpsons' conduct, hoping to protect them from humiliation, shame, and embarrassment. Tr. 1985-1986, 2048-2049. She also feared for their health. Tr. 1986-1987.

57. Also, as a result of this experience, Ms. Laura R. Pantoja's frustration and anger has resulted in her not being able to tolerate children, and she argues with her parents. She blames herself for all this. NG Tr. 20.

58. The Pantojas were required to hire an attorney in the tax case and, in connection with that case, have incurred attorney's fees in the amount of \$2,700. G Ex. 84. In connection with the tax case, the Pantojas incurred travel expenses in the amount of \$85 [340 miles times 25 cents per mile]. Tr. 2042-2044.

Discussion and Conclusions of Law

I. Legal Framework

HUD alleges that the Simpsons, by their conduct, intimidated the Pantojas and interfered with their rights protected by the Act, in violation of § 3617 of the Act.

¹⁶During the hearing Mr. Dwight Simpson made a point of pointing out that Mr. Victor R. Pantoja had been known by some other names. Mr. Dwight Simpson never pointed out the relevancy of this and I find none.

42 U.S.C. § 3617, *see also* 24 C.F.R. § 100.400(c)(2) and (5).¹⁷ In this regard HUD urges three violations: the first alleged violation deals with allegations that the Simpsons' conduct was aimed at thwarting the Pantojas' efforts to rehabilitate and occupy the Pantoja house; the second alleged violation deals with allegations that certain of the Simpsons' conduct was aimed at the Pantojas because the fair housing complaint was filed; and the third alleged violation deals with the conduct of the Simpsons after the Charge had been issued.

Section 3617 of the Act provides:

It shall be unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account of his having exercised or enjoyed, or on account of having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section 803, 804, 805, or 806 of this title.

42 U.S.C. § 3617.

This unlawful conduct includes "[t]hreatening, intimidating or interfering with persons in their enjoyment of a dwelling because of the race, color . . . or national origin of such persons . . . " and "[r]etaliating against any person because that person has made a complaint . . . in a proceeding under the Fair Housing Act." 24 C.F.R. § 100.400(c)(2) and (5).

II. The Simpsons' Campaign Unlawfully Interfered with the Pantojas' Enjoyment of the Pantoja House

The Simpsons engaged in a campaign of harassment of the Pantojas that was aimed at preventing the Pantojas from rehabilitating their house and at preventing Ms. Laura R. Pantoja from residing in and enjoying the house.

The Simpsons' sustained and pervasive campaign against the Pantojas consisted of filing numerous false, frivolous, unwarranted and unjustified complaints with Louisville's code enforcement agencies and other municipal and county authorities. The Simpsons' campaign also included confronting the Pantojas in a threatening manner; entering the Pantoja house property without permission; sending the Pantojas letters accusing them of criminal conduct and threatening retaliatory and other actions; and sending letters to the Pantojas and others which made defamatory statements about the Pantojas. The entire conduct of the frivolous tax litigation and Mr. Dwight Simpson's refusal to permit the Pantojas to pay the tax delinquency was also part of the Simpsons' campaign.

¹⁷In the Amended Charge HUD also alleged that the Simpsons engaged in conduct that violated §§ 3604(a) and (c) of the Act. In its brief, however, HUD does not allege or contend that these sections of the Act have been violated. Accordingly, I deem that HUD has abandoned its allegations that these sections have been violated.

The Simpsons' campaign was an entire course of conduct of unrelenting harassment and intimidation aimed at the Pantojas, which discouraged and interfered with the Pantojas' attempts to rehabilitate the Pantoja house and interfered with, discouraged, and prevented Ms. Laura R. Pantojas from living in and enjoying the Pantoja house. The Simpsons' vicious and heartless campaign against the Pantojas dominated the Pantojas lives for over two years, until the hearing in this matter.

It is clear from the statements of Mr. Dwight Simpson that he was extremely hostile to the Pantojas because of their Hispanic background. In this regard, although they were originally from Peru, Mr. Dwight Simpson, inaccurately and derogatorily, referred to the Pantojas, among other things, as "Damn Mexicans," "Puerto Ricans," "wetbacks" and "spics." He also stated that he would hound Ms. Laura R. Pantoja "to hell and back" and that he would hound her out of the Pantoja house because he would not live next door to a "spic." Thus, I conclude that the Simpsons engaged in their campaign of harassment and intimidation against the Pantojas because the Pantojas were Hispanic and dark complexioned and with the purpose of preventing the Pantojas from residing in and enjoying the Pantoja house.

The Simpsons' campaign threatened, intimidated and interfered with the Pantojas in the enjoyment of a dwelling, the Pantoja house, because of the national origin and skin color of the Pantojas. Accordingly, I conclude that the campaign of the Simpsons violated § 3617 of the Fair Housing Act. 24 C.F.R. § 100.400(c)(2); *See, HUD v. Johnson*, HUDALJ 06-93-1316-8 and HUDALJ 06-93-1262-8 (July 26, 1994); *HUD v. Lashley*, 2 Fair Housing-Fair Lending (P-H) ¶25,039 (HUDALJ Dec. 7, 1992); Robert Schwemm, *Housing Discrimination Law And Litigation* (1990), Chapter 20.

On March 20, 1992, Ms. Laura Pantoja filed the original complaint in this matter. In early June of 1992 Mr. Dwight Simpson confronted Ms. Laura R. Pantoja and told her that she had "not taken the right steps" and, because of that, "we are going to make things very unpleasant for you." This statement constituted a clear expression of his intent to punish her because she filed the complaint in this matter. Subsequent to this confrontation the Simpsons continued to engage in, and intensified, their campaign of intimidation and harassment aimed at preventing the Pantojas from using and enjoying the Pantoja house. Thus, after the filing of the complaint by Ms. Laura R. Pantoja alleging violations of the Act, a purpose of the Simpsons' campaign was to punish the Pantojas because the complaint had been filed. Accordingly, I conclude this constituted an additional violation of § 3617 of the Act. 24 C.F.R. § 100.400(c)(5).

HUD also alleges that the Simpsons' conduct after the Charge was issued also constitutes an additional violation of § 3617 of the Act, based on 24 C.F.R. § 100.400(c)(5). Although the record establishes that the Simpsons continued their campaign of harassment and intimidation unabated after the Charge was issued, the record fails to establish that they either increased the severity of the campaign, or continued it, even in part, because HUD issued the Charge. Accordingly, I find no merit to this allegation by HUD.

The Respondents chose not to file a brief in this matter, so they did not advise me of the defenses they wished to raise. To the extent they protested that it was not appropriate for Region IV, the Atlanta Region, of HUD to issue the Charge in this case and proceed with the prosecution of it, they offered no authority except that the Simpsons apparently did not get along with the HUD representatives from Region IV. This argument is rejected as the Secretary of HUD appropriately delegated the authority to issue Determinations of Reasonable Cause and Charges of Discrimination and to prosecute such cases. *See* 42 U.S.C. § 3608; 56 Fed. Reg. 2931 (January 25, 1991), later modified in 59 Fed. Reg. 10821 (March 8, 1994).

The Respondents might have argued, had they filed a brief, that the complaints to DIPL and the tax suit are protected by the First Amendment to the United States Constitution. Such an argument is without merit and is rejected. The Simpsons' campaign against the Pantojas involved an entire course of conduct, including, but not limited to, the frivolous and vexatious complaints to DIPL and the frivolous and vexatious tax litigation, which was aimed at preventing the Pantojas from rehabilitating, occupying, or otherwise enjoying their house. The Simpsons' campaign consisted of an entire course of reprehensible conduct which also included, among other things, physical confrontations, dumping trash, etc. on the Pantoja property, as well as the frivolous complaints to DIPL and others, the letter writing campaign and the vexatious and frivolous litigation.

In such a context the Simpsons' complaints to DIPL, the tax litigation, and the other threats of action against the Pantojas and others are not protected by the First Amendment. *See, HUD v. Johnson, California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508 (1972); *Bill Johnson's Restaurants, Inc. v. NLRB*, 461 U.S. 731 (1983); *See also HUD v. Gutleben*, HUDALJ 09-92-1893-1 (August 15, 1994).

The Simpsons also seem to have wished to raise some issue of HUD's failure to issue the Charge in this case within 100 days of the filing of the Complaint or to explain the delay as is required by the Act. 42 U.S.C. § 3610(a)(B)(iv) and (C). Respondents put in no evidence and made no arguments to demonstrate any prejudice or damage they incurred as a result of this delay or as a result of HUD's failure to explain the delay.¹⁸ The requirement that a charge must be issued within 100 days of the filing of the complaint, or an explanation for the delay must be issued, is not a jurisdictional requirement, and HUD's failure to meet this requirement does not require dismissal of the charge. *See Baumgardner v. HUD*, 960 F.2d 572, 578 (6th Cir. 1992); *Kelly v. HUD*, 3 F.3d 951 (6th Cir. 1993); *HUD v. Paradise Gardens*, 2 Fair Housing-Fair Lending P-H ¶ 25037 at 25,388 (HUDALJ Oct. 15, 1992), *aff'd* 8 F.3d 36 (11th Cir. 1993); *U. S. v. Gorman Towers Apartment*, Civil No. 94-2094, 1994 U.S. Dist. LEXIS 10047 (U.S. Dist. Court for the W.D. of Ark. July 15, 1994); *United States v. Scott*, 788 F. Supp. 1555, 1557-1559 (D. Kan. 1992); *United States v. Curlee*, 792 F. Supp. 699, 700-701 (C.D. Cal. 1992). Additionally, in the

¹⁸Further, it must be noted that the local agency did issue a Probable Cause Determination within 100 days of the filing of the complaint, so the Simpsons were on notice that a governmental agency had found merit to the discrimination complaint.

absence of any showing that the delay in issuing the charge, or the

failure to explain the delay, in any way prejudiced or damaged the Respondents, I conclude that dismissal of the Charge, as amended, is not warranted.

In sum, I conclude that Respondents' heartless and unrelenting campaign and entire course of conduct violated § 3617 of the Act, for over two years, up to the hearing, by harassing and intimidating the Pantojas in the use and enjoyment of their house because of their national origin and, from May 20, 1992 until the hearing, because a complaint was filed under the Act.

DAMAGES

The Act provides that where an administrative law judge finds that a respondent has engaged in a discriminatory housing practice, the judge shall issue an order for "such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief." 42 U.S.C. § 3612(g)(3). That section also provides that to "vindicate the public interest," a civil penalty may be assessed. The Charging Party seeks to compensate the Complainants for tangible and intangible damages. The Charging Party also prays for injunctive relief and the imposition of civil penalties against Respondents.

I. Tangible Out-of-pocket Losses

Complainants are entitled to economic damages for out-of-pocket expenses incurred as a result of Respondents' discriminatory acts. *See* Alan W. Heifetz & Thomas C. Heinz, *Separating the Objective, the Subjective, and the Speculative: Assessing Compensatory Damages in Fair Housing Adjudications*, 26 The John Marshall Law Review 1 (1992). Thus, they are entitled to be reimbursed for the expenses incurred because of the tax case, which was part of Respondents' campaign of harassment and intimidation. These expenses are \$2,700 in attorney's fees and travel expenses of \$85. *See HUD v. TEMS Association*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,028 (HUDALJ April 9, 1992).

II. Intangible Damages

HUD seeks damages for emotional and physical distress, humiliation, embarrassment, inconvenience and loss of important housing opportunity suffered by Complainants in the amounts of \$125,000 for Ms. Laura R. Pantoja, \$50,000 for Mr. Victor R. Pantoja, and \$75,000 for Mrs. Laura L. Pantoja.

Although "courts do not demand precise proof to support a reasonable award of damages [for emotional distress]," *Block v. R.H. Macy & Co., Inc.*, 712 F.2d 1241, 1245 (8th Cir. 1983), such damages may be inferred from the circumstances of the discrimination, as well as established by testimony. *See Seaton v. Sky Realty Co.*, 491

F.2d 634, 636 (7th Cir. 1974); *see also HUD v. Blackwell*, 2 Fair Housing-Fair Lending (P-H)

¶25,001 at 25011-13 (Dec. 21, 1989), *aff'd* 908 F.2d 864,872-73 (11th Cir. 1990). "Ordinarily, to the extent that damages evidence is based on the subjective experience of a complainant, that evidence must be evaluated against an objective standard to test its reasonableness. The usual standard is the reaction of a reasonable complainant to the respondent's discriminatory conduct. The reaction will vary with the relative egregiousness of the discriminatory conduct." *HUD v. Johnson*, at 10-11.

A. Ms. Laura R. Pantoja

Ms. Laura R. Pantoja was the individual who bore the brunt of the Simpsons' unrelenting and heartless campaign for over two years, up to the hearing in this matter. She went from being a happy person in 1990, with the prospect of being independent and looking forward to living in her own home, to being a person who is unhappy, afraid for her safety and the safety of her family, is not independent, still lives with her family, and is experiencing strains and friction with her family. She has not been able to move into the Pantoja house, even though she has expended a great amount of effort and work to rehabilitate the house and has moved all her belongings into it, because of the intimidation and harassment by the Simpsons. She knows she has suffered all this humiliation, intimidation, embarrassment and fear because of her Hispanic origin.

This cruel campaign conducted by the Simpsons dominated Ms. Laura R. Pantoja's life and her time for over two years. She was a captive, exposed to many and varied incidents, indignities, and attacks, all directed at her by the Simpsons. She felt frustration and embarrassment, both because the campaign affected her and also because she saw how it affected her parents. With respect to the affect on her parents, she felt responsible. Because of her fear and inability to move into the Pantoja house and because she has had to remain living with her parents, her relationship with her parents has deteriorated and has been damaged. Because of the multitude of letters they were receiving from the Simpsons, and because she saw how much it upset her parents,

Ms. Laura R. Pantoja decided to get a post office box. Similarly she felt she needed to get a beeper so she could come home if her parents needed her. Tr. 1950-1951, 1994.

The Simpsons' campaign of harassment and intimidation not only damaged Ms. Laura R. Pantoja's self-esteem, it caused her to worry about every aspect of her life. She was, sometimes, unable to sleep because of the worrying. Additionally, she is afraid for her safety and for her life and the lives of her family members. Tr. 1950.

Ms. Laura R. Pantoja was humiliated by the Simpsons' continuous attacks on her, her character and her credibility. These attacks were so widely disseminated by the Simpsons that she feared she would never be able to find work and be self-supporting, and, therefore, she felt compelled to change her name.

Ms. Laura R. Pantoja, for over two years, has endured humiliation, embarrassment,

frustration, fear for her own safety and that of her family, fear of inability to find work, loss of a housing opportunity and harm to her relationship with her parents, all because the Simpsons had directed their heartless and mean spirited campaign at her and her parents because they are Hispanic and dark skinned.

Ms. Laura R. Pantoja's reaction to the Simpsons' campaign of harassment and intimidation was reasonable and in proportion to the egregiousness of the Simpsons' conduct.

I conclude that the severe and sustained emotional distress, including fear of physical harm, and loss housing opportunity suffered by Ms. Laura R. Pantoja, all as a result of the unrelenting campaign conducted by the Simpsons, supports a finding that she was damaged in the amount of \$100,000. *Cf. HUD v. Johnson*.

B. Mrs. Laura L. Pantoja

Mrs. Laura L. Pantoja suffered as an object of the Simpsons' campaign for over two years. There was no respite or break in the barrage of attacks and acts of harassment. Mrs. Laura L. Pantoja felt pain at seeing the Simpsons throw garbage on her property. She found the Simpsons' campaign was threatening, humiliating and menacing and she experienced frustration at having to endure the series of hurtful letters. Tr. 1117, 1147, 1149. Ms. Laura L. Pantoja was so shaken by the incident when Mrs. Simpson almost struck Mrs. Pantoja with the truck that she had to be taken to the hospital. Tr. 1111.

Mrs. Laura L. Pantoja feared that the Simpsons would put her daughter in jail and Mrs. Laura L. Pantoja cried a lot and wondered were they would get the bail money to get her daughter released from jail. Mrs. Laura L. Pantoja felt guilty watching her daughter suffer through the "mountain of letters" generated by the Simpsons and seeing her humiliated, threatened and maltreated by the Simpsons. Mrs. Laura L. Pantoja also felt guilty because she felt her daughter was being subjected to harassment because her daughter had tried to help her parents. Tr. 1138.

As a result of the Simpsons' campaign Mrs. Laura L. Pantoja's life disintegrated and the quality of "everything left." Tr. 1138. Mrs. Laura L. Pantoja became nervous and hysterical as a result of the meanspirited campaign of the Simpsons. Tr. 1950. All of this emotional distress was caused by the Simpsons' campaign of harassment and intimidation that was aimed at the Pantojas because they are Hispanic and dark complexioned.

Mrs. Laura L. Pantoja's reaction to the Simpsons' discriminatory campaign was reasonable and in proportion to the egregiousness of the Simpsons' conduct. For over two years Mrs. Laura L. Pantoja suffered severe emotional distress, humiliation, guilt and fear that her daughter would be put in jail, all because of the Simpsons' campaign of harassment and intimidation and I conclude that Mrs. Laura L. Pantoja suffered emotional damages in the amount of \$50,000. *Cf. HUD v. Johnson*.

C. Mr. Victor R. Pantoja

Mr. Victor R. Pantoja was in his mid-seventies and in frail health when he was subjected to the Simpsons' continuous campaign of harassment and intimidation. As an object of the Simpsons' harassment and intimidation for over two years, Mr. Victor R. Pantoja saw his family, and especially his daughter, under great stress. The injustice of the entire situation affected him substantially.

Mr. Pantoja, as a result of the discriminatory attacks by the Simpsons, experienced dizziness and had to be taken to the hospital. He was hospitalized and medicated as result of the Simpsons' campaign. He was no longer able to work or to do anything.
Tr. 669, 2050.

In light of the embarrassment and humiliation Mr. Victor R. Pantoja had to continuously endure for over two years as a result of the Simpsons' discriminatory campaign, which resulted in his hospitalization and some incapacity, I conclude that Mr. Pantoja suffered damages in the amount of \$30,000. *See HUD v. Johnson; compare HUD v. Ocean Sands Inc.*, 2 Fair Housing-Fair Lending (P-H) ¶ 25,061 (HUDALJ Nov. 15, 1993); *HUD v. The Elroy R. and Dorothy Burns Trust, et al.*, HUDALJ 09-92-1622-1 (June 17, 1994) *appeal pending*.

Civil Penalty

To vindicate the public interest, the Act also authorizes an administrative law judge to impose civil penalties upon respondents who violate the Act. 42 U.S.C. § 3612(g)(3)(A); 24 C.F.R. § 104.910(b)(3). Assessment of a civil penalty is not automatic. *See* House Comm. on the Judiciary, *Fair Housing Amendments Act of 1988*, H.R. Rep. No. 711, 100th Cong., 2d Sess. at 37 (1988), *reprinted in* 1988 U.S.C.C.A.N. 2173 at 2198. In determining the amount of a penalty, an administrative law judge must consider the nature and circumstances of the violation, the degree of culpability, the financial circumstances of the respondent, the goal of deterrence, and other matters as justice may require. *Id.*

The Charging Party seeks an imposition of a civil penalty of \$30,000 against each of the Simpsons. Thus, the Charging Party seeks assessment of a \$10,000 against each Respondent for each of the three alleged violations of the Act.

When an administrative law judge finds " . . . a respondent has engaged . . . in a discriminatory housing practice . . . " the Act directs that an order be issued that provides for appropriate relief. "Such order may, to vindicate the public interest, assess a civil penalty against the respondent--

(A) In an amount not exceeding \$10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice; . . . "

42 U.S.C. § 3612(g)(3).

In urging its position that each Respondent can be assessed \$10,000 for each violation of the Act, the Charging Party cites a number of other Federal statutes that expressly require the assessment of separate civil penalties for each violation.¹⁹ The Charging Party argues that, although the Act does not require an assessment of a civil penalty for each violation, nothing in the Act precludes the assessment of a separate civil penalty for each violation.

The Charging Party also points out that whereas the enforcement by the Secretary of HUD has the \$10,000 limit (42 U.S.C. § 3612), such cases, he alleges, usually involve only single violations, whereas the enforcement by the Attorney General of "pattern and practice cases" has a \$50,000 limit for first time violators.

I reject these arguments. In fact all of the above demonstrates that where Congress intended for the civil fine to be higher for each violation, it specifically so provided. If the Charging Party felt this matter should have been brought as a "pattern and practice" it could have referred the matter to the Attorney General.

I conclude that the thrust of 42 U.S.C. § 3612 is that with respect to a first offender, in a hearing before an administrative law judge, the maximum civil penalty that can be assessed against each respondent is \$10,000 in the first adjudication that the Act was violated. *See HUD v. Gutleben*, at page 28 n. 28. In effect, first offenders can not be fined more than \$10,000 by an administrative law judge. To hold otherwise would frustrate the clear limit intended by Congress and could lead to the piling up of civil penalties.

Lack of Previous Violations

Neither Respondent has a history of any prior discriminatory acts, therefore the maximum civil penalty I may assess in this proceeding is \$10,000 against each. 42 U.S.C. § 3612(g)(3)(A).

Nature and Circumstances of the Violation and Culpability

This is a case of a deliberate and premeditated campaign of discrimination that went on for over two years. The campaign was malevolent, savage and unrelenting. The Respondents had conducted an emotional war against the Pantojas for over two years and the Respondents showed no mercy. All this viciousness was directed at the Pantojas because they were

¹⁹The Charging Party cited the Federal Mine Safety and Health Act of 1977, 30 U.S.C. § 820; and the Clean Air Act, 42 U.S.C. § 7412(b).

Hispanic and the Respondents did not want Hispanics as neighbors and because the complaint had been filed in this matter.

Both Mr Dwight M. Simpson and Mrs. Caroline Simpson participated in the campaign and were partners and supported each other in the prosecution of their heartless campaign against the Pantojas.

Deterrence

The Respondents have demonstrated that they are unrepentant and unremorseful. They have demonstrated that they hold the Fair Housing Act, its requirements, and the proceedings to enforce it in contempt.

The record in this proceeding clearly demonstrates that only significant civil penalties will deter the Respondents from continuing to violate the Act.

Respondents' Financial Circumstances

Evidence regarding Respondents' financial circumstances is peculiarly within their knowledge, so they have the burden of introducing such evidence into the record. If they fail to produce credible evidence militating against assessment of a civil penalty, a penalty may be imposed without consideration of their financial circumstances. *See Campbell v. United States*, 365 U.S. 85, 96 (1991); *HUD v. Blackwell*, at 25015. Respondents have made no assertion and have not alleged that they are unable to pay, nor is there evidence that the civil penalty would cause them undue hardship.²⁰

After consideration of these factors, I determine that imposition of a \$10,000 civil penalty is warranted against Mr. Dwight M. Simpson and that imposition of a \$10,000 civil penalty is warranted against Mrs. Caroline Simpson.

Injunctive Relief

Injunctive relief may be ordered to remove the lingering effects of prior discrimination and to insure that a respondent does not violate the Act in the future. *Blackwell*, at 25,014; *HUD v. Johnson*, at 14. The relief is to be molded to the specific facts of the case. The Order set forth below provides appropriate injunctive relief.

ORDER

Having concluded that Respondents Dwight M. Simpson, Jr. and Caroline Simpson have

²⁰See Tr. 1257-1258.

discriminated against Laura R. Pantoja, Victor R. Pantoja and Laura L. Pantoja, in violation of § 3617 of the Fair Housing Act, as amended, (42 U.S.C. § 3617) and the regulations codified at 24 C.F.R. §§ 100.400(b) and (c)(2) and (5), it is **ORDERED** that:

1. Respondents are permanently enjoined from discriminating against Laura R. Pantoja, Victor R. Pantoja and Laura L. Pantoja or any other person, or visitor or associate of such persons, with respect to housing because of, color or national origin. Prohibited actions include, but are not limited to, those enumerated in 24 C.F.R. Part 100. Such prohibited actions include coercing, intimidating, threatening, or interfering with any person in the enjoyment of a dwelling because of that person's color or national origin, and with any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed any right protected by the Act.

2. Within forty-five (45) days of the date on which this Order becomes final, Respondents shall pay damages in the amount of \$100,000 to Ms. Laura R. Pantoja for emotional distress and lost housing opportunity.

3. Within forty-five (45) days of the date on which this Order becomes final, Respondents shall pay damages in the amount of \$50,000 to Mrs. Laura L. Pantoja for emotional distress.

4. Within forty-five (45) days of the date on which this Order becomes final, Respondents shall pay damages in the amount of \$30,000 to Mr. Victor R. Pantoja for emotional distress.

5. Within forty-five (45) days of the date on which this Order becomes final, the Respondents shall pay damages in the amount of \$2,785, jointly to Mr. Victor R. Pantoja, Mrs. Laura L. Pantoja, and Ms. Laura R. Pantoja for out of pocket expenses.

6. Within forty-five (45) days of the date on which this Order becomes final, Respondent Dwight M. Simpson, Jr., shall pay a civil penalty of \$10,000 to the Secretary of HUD and Respondent Caroline Simpson shall pay a civil penalty of \$10,000 to the secretary of HUD.

This Order is entered pursuant to 42 U.S.C. § 3612(g)(3) and 24 C.F.R. § 104.910, and will become final upon the expiration of thirty (30) days or the affirmance, in whole or in part, by the Secretary within that time.

SAMUEL A. CHAITOVITZ
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of this INITIAL DECISION issued by SAMUEL A. CHAITOVITZ, Administrative Law Judge, in HUDALJ 04-92-0708-8, were sent to the following parties on this 9th day of September, 1994, in the manner indicated:

Chief Docket Clerk

REGULAR MAIL

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Louisville, KY 40218

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